

IN THE SENATE OF THE UNITED STATES.

MARCH 25, 1880.—Ordered to be printed.

Mr. JONES, of Florida, from the Committee on Public Lands, submitted the following

REPORT:

[To accompany bill S. 92.]

The Senate Committee on Public Lands in the Forty-fifth Congress made the following report upon a bill similar to the present. Your committee concur in the conclusions arrived at in said report, as well as in the statement of the facts which it contains, and adopt both in support of the present bill, the passage of which is recommended.

[Report to accompany an amendment to bill S. 92.]

The testimony submitted before the committee in this case shows that Morgan's Louisiana and Texas Railroad, formerly known as the New Orleans, Opelousas and Great Western Railroad Company, was incorporated by the State of Louisiana with authority to construct a railroad from New Orleans to the State line of Texas. By act of June 3, 1856, Congress granted to the State of Louisiana public lands to aid in the construction of this road. In 1866 the grant lapsed and the company had built 80 miles of road from New Orleans to Berwick's Bay. The entire grant, amounting to 719,193.79 acres, was certified to the State, and the company for its 80 miles of completed road was entitled to 51,445.03 acres. But when the company came to examine the lands certified to them, they found that *all the public lands* lying along the 80 miles of completed road within the limits of the grant made by act of June 3, 1856, were *swamp and overflowed* lands which had been granted to the State of Louisiana by the act of March 2, 1849, to aid in the construction of the levees on the Mississippi River, and were expressly reserved from the operation of the railroad grant by the provisions of the act making the same. Therefore the company made no claim to any of these lands, and did not attempt to dispose of any of them, believing that such lands had been erroneously certified to the State under the railroad grant, whereas they belonged to the State under the swamp act, and, such being the fact, no valid title could be conveyed to or by the railroad company.

The company did not benefit from the grant, for the reason that no lands were available under the grant along the 80 miles of constructed road; and all the lands lying opposite the unconstructed portion of the road were declared forfeited by the act of July 14, 1870, and were restored to the United States in accordance with said act.

The Commissioner of the General Land Office, to whom the bill was referred by the chairman of the committee, for information and report thereon, closes an exhaustive investigation of the matter in the following language:

"In view of the foregoing, I do not hesitate to say that the relief sought should, in my opinion, be granted; but I cannot recommend the passage of the bill in its present shape. The lands have not 'been forfeited,' as is stated in the preamble, for, as herein shown, the title thereto is still outstanding; and I would suggest that some such provision as is indorsed upon the back of the bill be added.

"With the change and addition suggested, I am of opinion that Morgan's Louisiana and Texas Railroad Company should be relieved from the burdens imposed by the third section of the act approved June 3, 1856."

The provision referred to and recommended by the Commissioner is as follows:

"That said railroad company shall place on file in the Department of the Interior a certificate of renunciation of all right, title, and interest in and to all lands granted, conveyed, or

acquired by act of Congress approved June 3, 1856, except so much of said grant as said railroad company may have occupied and may require for the right of way, road-bed, side-tracks, turn-outs, water-stations, depots, &c."

The committee concur in recommending this amendment as an additional section to the bill, and recommend its passage.

A letter from the Commissioner of the General Land Office on the subject is hereto appended:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 29, 1879.

SIR: I have received a letter from the Hon. R. J. Oglesby, chairman Committee on Public Lands, dated 25th instant, inclosing Senate bill No. 721, entitled "A bill to relieve Morgan's Louisiana and Texas Railroad, formerly the New Orleans, Opelousas and Great Western Railroad, from certain conditions imposed by act of June third, eighteen hundred and fifty-six, chapter forty-two, section three," upon which he desires information bearing upon, and suggestions touching, the subject thereof.

The preamble to the bill, after reciting the fact that a grant of lands was made for the purpose of aiding in the construction of the railroad aforesaid, declares that "whereas the said railroad, so far as it has been built, has not benefited from the said grant, and the said lands have been forfeited to the United States by act of July 14, 1870"; and the bill provides that the said Morgan's Louisiana and Texas Railroad shall be relieved from the conditions imposed by the said section 3 of the act of June 3, 1856.

I have the honor to submit the following in reply:

By the first section of the act of Congress referred to there was granted to the State of Louisiana, for the purpose of aiding in the construction of a railroad (among others) from New Orleans, by Opelousas, to the State line of Texas, "every alternate section of land designated by odd numbers for six sections in width on each side of said road."

Provision was made for indemnity in case it appeared when the route of the road was definitely fixed that any of the lands granted had been sold, reserved, or otherwise disposed of, which was to be selected from the lands of the United States within 15 miles of the line of road.

Section three provided for the disposal of the lands, and declared that the railroad should be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

The company now seeks to be relieved from the conditions imposed by that section.

The New Orleans, Opelousas and Great Western Railroad Company (of which the present corporation is successor by purchase under United States marshal's sale) filed in this office December 5, 1856, two maps showing the definite location of its road from Algiers (opposite New Orleans) to Berwick's Bay, and from that point, via Opelousas, to Washington, 170½ miles. On March 5, 1857, a third map was filed showing the definite location of the road from Opelousas to the Sabine River (Texas line).

As was then the practice, the lands, amounting to 719,193.79 acres, were certified, without awaiting the construction of the road, leaving with the State the duty of executing the trust.

On the 21st November, 1860, there was received at this office a map from the governor of Louisiana showing the construction of the road from Algiers to Brashear City, on Berwick's Bay, a distance of 80 miles. Further reconstruction not having been prosecuted, Congress by an act approved July 14, 1870, declared forfeited to the United States all lands "which have not been legally disposed of by the said State under the said grant."

Every necessary effort was made by this office to ascertain what lands had been legally disposed of by the State, but after a lapse of more than two years, during which time no information on the subject could be or was procured, *the lands lying opposite the uncompleted portion*, and falling outside of the limits of the grant under the act of March 3, 1871, for the New Orleans, Baton Rouge and Vicksburg Railroad, were restored in accordance with the said act of 1870.

The lands remaining in the State, and which lie opposite the completed part of the road, amount to 51,452.03 acres.

Various attempts have been made by the present management of the company to obtain the relief now sought from Congress, one of which was by application to the honorable Secretary of the Interior for a review and reconsideration of the adjustment made prior to the time of the purchase by Mr. Morgan.

Upon an examination of the subject it was found that the lands which were embraced in the approvals to the State for the benefit of the said New Orleans, Opelousas and Great Western Railroad were claimed by the State, and reported by the surveyor-general as swamp in the several lists received at this office between March 3, 1857, and January 1, 1860. The report of the surveyor-general constituted the only evidence

in this office of the swamp character of the lands, and it had been the practice prior to 1861 to accept such report as sufficient proof of the fact.

The then Secretary of the Interior, Hon. J. Thompson, under date of February 8, 1860, addressed a communication to this office, laying down, among others, the following rules for guidance in adjusting the conflicting claims under grants for swamp and railroad purposes:

1st. When the swamp selections falling within the six miles limits had been made and reported to your office before the definite location of the road, it was to be determined from the records and files of this office whether the tracts passed under the swamp grant.

2d. When the definite location of the road precedes the swamp selection, the surveyor-general should not thereafter admit or report any of such lands as swamp, holding that the title under the railroad grant had become fully vested, although the lands were in fact swamp, and that the effect of the latter grant was to change the use to which the lands were to be applied, and holding also that "when the State accepts the latter grant and proceeds to complete her title under it, she has assented to the change, and both the grantor and the grantee appear to be concluded by their voluntary, yet concurrent action."

The third rule related to lands within the indemnity limits of the railroad grant, and provided that the State might claim under either grant, and that her selections when made and approved under either should be final. The definite location of the road in this case preceded the swamp selections, and this office on the 2d January, 1861, under the authority of the second rule, and at the instance of the railroad company, rejected the swamp selections. This action was followed by the approval of the lands to the State, for the benefit of the railroad, on the 29th of the same month. Copies of the list of swamp selections and the rejection thereof were immediately transmitted to the governor of Louisiana.

The Secretary (your predecessor, the Hon. Z. Chandler), on the 12th May, 1876, denied the request of the company, upon the ground that, notwithstanding the construction by Secretary Thompson, as viewed in the light of the decision of the Supreme Court in *Railroad Company vs. Smith* (9 Wall., 95), was erroneous, the status of the lands having been determined by decision of the department more than fifteen years before, and that decision having been accepted and acquiesced in, the question was *res adjudicata*.

I have no official advice as to whether or not the lands embraced in the certifications remaining outstanding passed to the present company with its acquirement of the franchises, stock, &c., of the old company, but it is understood and believed that they did not.

Further inquiry will, I believe, show that the present company should not be burdened with the impositions of the proviso to the third section of the granting act, even though the old corporation must have been held to a strict compliance with its requirements.

There can be little, if any, doubt that the lands lying coterminous with the road as constructed are, and always have been, swamp and overflowed.

Their anomalously adjudicated status cannot, of course, interfere with any rights the State may have had in them by virtue of the grant to her as swamp lands; for by the very language of the railroad grant, "any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act," &c. If the lands were swamp they were reserved from the operation of the railroad grant, and could not in any contingency, with the proviso in the act just quoted, pass to the same. (*Railroad Company vs. Fremont County*, 9 Wall., 89; *Wolcott vs. Des Moines Navigation Company*, 5 *ibid.*, 681; *Williams vs. Baker*, 17 *ibid.*, 144; *L. L. & G. R. R. Co. vs. U. S.*, 2 Otto, 733.) In the latter case, in construing the very same language, the court says: "Every tract set apart for some special use is reserved to the government to enable it to enforce that use."

It being, therefore, very clear that they were excepted from the railroad grant, what effect has the certification to the State for that grant upon her right to claim them under the swamp grant?

In the case of *Railroad Company vs. Smith*, referred to above, the Supreme Court held that parol evidence was competent to prove that a particular piece of land was swamp land, within the meaning of the act of Congress, and declared further "the matter to be shown is one of observation and examination; and whether arising before the Secretary [of the Interior], whose duty it was primarily to decide it, or before the court, whose duty it became because the Secretary had failed to do it, this was clearly the best evidence to be had, and was sufficient for the purpose"; and in *French vs. Fyan et al.* (3 Otto, 169), it was declared that the principle therein announced (*viz.*, that where, as in the act granting swamp lands to the States, it is made the duty of the Secretary of the Interior to identify those lands and make lists and issue patents

for them, a patent so issued cannot be impeached in an action at law by showing that the land which it conveys was not in fact swamp and overflowed) did not conflict with the decision just referred to.

It appears, therefore, notwithstanding the adjudication by Secretary Thompson and the certifications based thereon, that the State could not only properly claim the lands under her swamp grant, but can at any time, by proper proceedings, secure the vacation of the certifications in favor of the claimant. Action of this character has been had in Iowa, and the supreme court of that State, in a case similar to the one under consideration, declared that the approvals for the company were void.

Aside from the foregoing, there appears to be less reason for continuing in force the conditions of the proviso under consideration, for, by the interpretation given to the language thereof by the Supreme Court in *Lake Superior and Mississippi Railroad Company vs. United States* (3 Otto, 442), but little practical benefit can be derived from its enforcement. It has declared that the only purpose of the reservation in question was to allow the government the right to place its locomotive-engines and cars upon the tracks, and to use the tracks as a public highway, and that it does not entitle the government to have troops or property transported by the companies over their respective roads free of charge for transporting the same.

In view of the foregoing, I do not hesitate to say that the relief sought should, in my opinion, be granted; but I cannot recommend the passage of the bill in its present shape. The lands have not "been forfeited," as is stated in the preamble, for, as herein shown, the title thereto is still outstanding; and I would suggest that some such provision as is indorsed upon the back of the bill be added.

With the change and additions suggested, I am of opinion that Morgan's Louisiana and Texas Railroad Company should be relieved from the burdens imposed by the third section of the act approved June 3, 1856.

The bill accompanying Senator Oglesby's letter is herewith inclosed.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

Hon. C. SCHURZ,
Secretary of the Interior.